## Remarks/Arguments

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

By the present amendment, claim 1 has been amended and claim 14 has been cancelled.

Below is a discussion of the 35 U.S.C. §102(b) rejection of claims 1-2, 13-14, 25-26 and 29-30, the 35 U.S.C. §103(a) rejection of claims 9-12, the 35 U.S.C. §103(a) rejection of claims 15-18, and the 35 U.S.C. §103(a) rejection of claims 19 and 24.

### 1. 35 U.S.C. §102(b) rejection of claims 1-2, 13-14, 25-26 and 29-30.

Claims 1-2, 13-14, 25-26 and 29-30 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,008,112 to DePrince *et al.* (hereinafter, "DePrince"). With respect to claim 1, the Office Action argues that DePrince teaches a delivery device comprising a body that defines an interior chamber holding a reagent in solution, a delivery port fluidly connected with the chamber, and a reagent permeable membrane in fluid communication with the chamber. The Office Action also argues that the language of claim 1 reciting "the delivery port, through which reagent passes when the delivery port is in fluid communication with the target material, such that substantially no volume change occurs in the target material during delivery of the reagent to the target material" is a functional limitation and thus is not of any patentable significance.

In response to these rejections, claim 1 has been amended to more particularly point out and distinctly claim the present invention and to better define the present invention over DePrince. More particularly, claim 1 has been amended to include the further feature that the reagent permeable membrane includes a plurality of holes which define through passages through the membrane. Support for amended claim 1 can be found at ¶¶75-77 of the present application. As shown in Figs. 4 and 4A of the present application, for example, the reagent permeable membrane includes a plurality of holes which define through passages extending through the membrane.

It is respectfully submitted that DePrince does not teach or disclose a delivery device having a reagent permeable membrane which includes a plurality of holes defining through passages through the membrane. DePrince discloses that a porous membrane comprising a portion of the delivery device can be made of materials having essentially the same features and characteristics as those materials suitable for a partition (col. 5, ll. 66-68). DePrince also discloses that the materials suitable for forming the partition include known materials having a plurality of microscopic sized interconnecting pores (col. 5, ll. 33-37). DePrince does not disclose, however, that such interconnecting pores define through passages which extend through the partition or porous membrane.

Accordingly, it is respectfully submitted that claim 1, as amended, is patentable over DePrince.

In addition, it is respectfully submitted that claims 2, 9-19, 24-26 and 29-30, which depend either directly or indirectly from claim 1, are allowable for at least the reasons that claim 1 is allowable, and for the specific features recited therein.

## 2. 35 U.S.C. §103(a) rejection of claims 9-12.

Claims 9-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over DePrince in view of U.S. Patent No. 6,048,457 to Kopaciewicz *et al.* (hereinafter, "Kopaciewicz"). The Office Action argues that Kopaciewicz teaches a pipette comprising a body having a delivery port, a chamber, and a membrane, wherein the delivery port has a diameter of about 10-300 microns and the membrane has a thickness of about 2-50 microns. The Office Action also argues that it would have been obvious to a person having ordinary skill in the art to modify the device of DePrince to include the features recited in claims 9-12.

By the present amendment, claim 1 has been amended to more particularly point out and distinctly claim the present invention and to better define the present invention over DePrince. More particularly, claim 1 has been amended to include the further feature that the reagent permeable membrane includes a plurality of holes which define through passages through the membrane. Support for amended claim 1 can be found at ¶¶75-77 of the present application. As shown in Figs. 4 and 4A of the present application, for example, the reagent permeable membrane includes a plurality of holes defining through passages through the membrane.

It is respectfully submitted that claims 9-12, which depend either directly or indirectly from claim 1, are not obvious over DePrince in view of Kopaciewicz because of the aforementioned deficiencies in the rejection of claim 1 and, more particularly, because the proposed combination of references fails to result in the features of amended claim 1.

Accordingly, it is respectively submitted that claims 9-12 are patentable over DePrince in view of Kopaciewicz.

### 3. 35 U.S.C. §103(a) rejection of claims 15-18.

Claims 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over DePrince in view of U.S. Patent No. 3,993,072 to Zaffaroni (hereinafter, "Zaffaroni"). The Office Action argues that Zaffaroni teaches a microporous drug delivery device and a method for calculating different pore size diameters. The Office Action also argues that it would have been obvious to a person of ordinary skill in the art to modify the device of DePrince to provide a membrane that has holes/pores having a diameter of about 10-20 microns to effectively transfer the reagent/drug through the media in the pores of the wall.

By the present amendment, claim 1 has been amended to more particularly point out and distinctly claim the present invention and to better define the present invention over DePrince. More particularly, claim 1 has been amended to include the further feature that the reagent permeable membrane includes a plurality of holes which define through passages through the membrane. Support for amended claim 1 can be found at ¶¶75-77 of the present application. As shown in Figs. 4 and 4A of the present application, for example, the reagent permeable membrane includes a plurality of holes defining through passages through the membrane.

It is respectfully submitted that claims 15-17, which depend either directly or indirectly from claim 1, are not obvious over DePrince in view of Zaffaroni because the proposed combination of references fails to result in the features of amended claim 1.

Accordingly, it is respectively submitted that claims 15-17 are patentable over DePrince in view of Zaffaroni.

It is also respectfully submitted that claim 18 is not obvious over DePrince in view of Zaffaroni because neither DePrince nor Zaffaroni teaches or suggests a delivery device having a reagent permeable membrane with a plurality of holes defining through passages through the membrane, wherein the holes are filled with a reagent permeable material. Zaffaroni discloses that the wall of the drug delivery device is comprised of a microporous material whose pores are filled with a medium permeable to the passage of a drug (col. 5, ll. 4-7). Zaffaroni also discloses that the medium is a liquid or liquid phase of which molecules of drug dissolve in and diffuse through (col. 5, ll. 20-27). The reagent permeable material of the present application, however, is comprised of a solid or semi-solid material that avoids interactions with a reagent and thus helps to retain the reagent until the tip of the burette makes contact with the target liquid (¶¶71-73).

Accordingly, it is respectively submitted that claim 18, which depends indirectly from claim 1, is patentable over DePrince in view of Zaffaroni because the proposed combination of references fails to result in the features of amended claim 1 and the specific features recited in claim 18.

## 4. 35 U.S.C. §103(a) rejection of claims 19 and 24.

Claims 19 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over DePrince. The Office Action acknowledges that DePrince fails to teach an agitator and a heating or cooling device. The Office Action argues that agitators and heating/cooling devices are conventionally known in the art and, therefore, that it would have been obvious to a person having ordinary skill in the art to modify the device of DePrince to include an agitator or heating/cooling device.

By the present amendment, claim 1 has been amended to more particularly point out and distinctly claim the present invention and to better define the present invention over DePrince. More particularly, claim 1 has been amended to include the further feature that the reagent permeable membrane includes a plurality of holes which define through passages through the membrane. Support for amended claim 1 can be found at ¶¶75-77 of the present application. As shown in Figs. 4 and 4A of the present application, for example, the reagent permeable membrane includes a plurality of holes defining through passages through the membrane.

It is respectfully submitted that claims 19 and 24, which depend directly from claim 1, are not obvious over DePrince because DePrince fails to teach or suggest the features of amended claim 1.

Accordingly, it is respectively submitted that claims 19 and 24 are patentable over DePrince.

Please charge any deficiency or credit any overpayment in the fees for this matter to our Deposit Account No. 20-0090.

Respectfully submitted,

/Richard S. Wesorick/
Richard S. Wesorick
Reg. No. 40,871

TAROLLI, SUNDHEIM, COVELL,
& TUMMINO L.L.P.
1300 East Ninth Street, Suite 1700
Cleveland, Ohio 44114
Phone:(216) 621-2234
Fax: (216) 621-4072
Customer No.: 68,705